

1           Thiago Coelho, SBN 324715  
2           [thiago@wilshirelawfirm.com](mailto:thiago@wilshirelawfirm.com)  
3           Jasmine Behroozan, SBN 325761  
4           [jasmine@wilshirelawfirm.com](mailto:jasmine@wilshirelawfirm.com)  
5           **WILSHIRE LAW FIRM**  
6           3055 Wilshire Blvd., 12<sup>th</sup> Floor  
7           Los Angeles, California 90010  
8           Telephone: (213) 381-9988  
9           Facsimile: (213) 381-9989

*Attorney for Plaintiff and Proposed Class*

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

VALERIE BROOKS, individually and on behalf of all others similarly situated,

Plaintiff,

V.

BAIT INC., a California corporation; and  
DOES 1 to 10, inclusive.

### Defendants.

CASE NO.:

## **CLASS ACTION COMPLAINT**

- 1. VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. § 12181**
- 2. VIOLATIONS OF THE UNRUH CIVIL RIGHTS ACT**

**DEMAND FOR JURY TRIAL**

Plaintiff Valerie Brooks (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action based upon personal knowledge as to herself and her own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigations of her attorneys.

## **NATURE OF THE ACTION**

1. Plaintiff is a visually-impaired and legally blind person who requires screen-reading software to read website content using her computer. Plaintiff uses the terms "blind" or "visually-impaired" to refer to all people with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200. Some blind people who meet this definition have limited vision. Others have no vision.

1       2. Plaintiff, individually and on behalf of those similarly situated persons (hereafter  
2 “Class Members”), brings this Class Action to secure redress against Defendant Bait Inc.  
3 (“Defendant”) and DOES 1-10, for its failure to design, construct, maintain, and operate its  
4 website to be fully and equally accessible to and independently usable by Plaintiff and other blind  
5 or visually-impaired people. Defendant’s denial of full and equal access to its website, and  
6 therefore denial of its products and services offered thereby and in conjunction with its physical  
7 locations, is a violation of Plaintiff’s rights under the Americans with Disabilities Act (“ADA”)  
8 and California’s Unruh Civil Rights Act (“UCRA”).

9       3.     Because Defendant’s website, <http://www.baitme.com/>, (the “Website” or  
10   “Defendant’s website”), is not fully or equally accessible to blind and visually-impaired  
11   consumers, resulting in violation of the ADA, Plaintiff seeks a permanent injunction to cause a  
12   change in Defendant’s policies, practices, and procedures so that Defendant’s website will  
13   become and remain accessible to blind and visually-impaired consumers.

## THE PARTIES

15       4. Plaintiff, at all times relevant and as alleged herein, is a resident of California,  
16 County of Sacramento. Plaintiff is legally blind, visually-impaired handicapped person, and  
17 member of a protected class of individuals under the ADA, pursuant to 42 U.S.C. § 12102(1)-(2),  
18 and the regulations implementing the ADA set forth at 28 CFR §§ 36.101 *et seq.*

19       5. Defendant Bait Inc. is a California corporation, with its headquarters in Los  
20 Angeles, California. Defendant's servers for the website are in the United States. Defendant  
21 conducts a large amount of its business in California, and the United States as a whole. These  
22 stores constitute places of public accommodation. Defendant's stores provide to the public  
23 important goods and services. Defendant's website provides consumers access to Defendant's  
24 apparel, which is made in collaboration with highly reputed and sought-after brands such as A  
25 Bathing Ape and Undefeated. Defendant's website provides consumers with access to copious  
26 collaborations, apparel, headwear, accessories, collectibles, skate wear, and snow gear.  
27 Consumers can further access information about the store locations across the globe, brands

1 Defendant has collaborated with, items available for pre-order, items for sale, contact information,  
2 shipping information, return policy, social media accounts, projects, and blog.

3       6. Plaintiff is unaware of the true names, identities, and capacities of Defendants sued  
4 herein as DOES 1 to 10. Plaintiff will seek leave to amend this complaint to allege the true names  
5 and capacities of DOES 1 to 10 if and when ascertained. Plaintiff is informed and believes, and  
6 thereupon alleges, that each Defendant sued herein as a DOE is legally responsible in some  
7 manner for the events and happenings alleged herein and that each Defendant sued herein as a  
8 DOE proximately caused injuries and damages to Plaintiff as set forth below.

9           7.     Defendant's stores are public accommodations within the definition of Title III of  
10   the ADA, 42 U.S.C. § 12181(7).

11       8.      The Website, <http://www.baitme.com/>, is a service, privilege, or advantage of  
12 Defendant's services, products, and locations.

## **JURISDICTION AND VENUE**

14       9.     This Court has subject matter jurisdiction over the state law claims alleged in this  
15 Complaint pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)(A) because: (a) the  
16 matter in controversy exceeds the sum of \$5 million, exclusive of interest and costs; and (b) some  
17 of the class members are citizens of a state (California).

18        10. Defendant is subject to personal jurisdiction in this District. Defendant has been  
19 and is committing the acts or omissions alleged herein in the Eastern District of California that  
20 caused injury, and violated rights prescribed by the ADA and UCRA, to Plaintiff and to other  
21 blind and other visually impaired-consumers. A substantial part of the acts and omissions giving  
22 rise to Plaintiff's claims occurred in the Eastern District of California. Specifically, on several  
23 separate occasions, Plaintiff has been denied the full use and enjoyment of the facilities, goods  
24 and services of Defendant's website in Sacramento County. The access barriers Plaintiff has  
25 encountered on Defendant's website have caused a denial of Plaintiff's full and equal access  
26 multiple times in the past and now deter Plaintiff on a regular basis from accessing Defendant's  
27 website. Similarly, the access barriers Plaintiff has encountered on Defendant's website have

1 impeded Plaintiff's full and equal enjoyment of goods and services offered at Defendant's  
2 physical locations.

3       11. This Court also has subject-matter jurisdiction over this action pursuant to 28  
4 U.S.C. § 1331 and 42 U.S.C. § 12181, as Plaintiff's claims arise under Title III of the ADA, 42  
5 U.S.C. § 12181, *et seq.*, and 28 U.S.C. § 1332.

6       12. This Court has personal jurisdiction over Defendant because it conducts and  
7 continues to conduct a substantial and significant amount of business in the State of California,  
8 County of Sacramento, and because Defendant's offending website is available across California.

9       13. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. § 1391  
10 because Plaintiff resides in this District, Defendant conducts and continues to conduct a  
11 substantial and significant amount of business in this District, Defendant is subject to personal  
12 jurisdiction in this District, and a substantial portion of the conduct complained of herein occurred  
13 in this District.

14       14. Defendant owns, operates, and maintains brick and mortar store locations in the  
15 State of California. Defendant's stores offer goods and services to the public. Defendant also  
16 offers good and services to the public through the Website. Defendant's brick and mortar store  
17 locations and website are integrated and are public accommodations pursuant to 42 U.S.C. §  
18 12181(7).

19                   **THE AMERICANS WITH DISABILITIES ACT AND THE INTERNET**

20       15. The Internet has become a significant source of information, a portal, and a tool  
21 for conducting business, doing everyday activities such as shopping, learning, banking,  
22 researching, as well as many other activities for sighted, blind, and visually-impaired persons  
23 alike.

24       16. In today's tech-savvy world, blind and visually-impaired people have the ability to  
25 access websites using keyboards in conjunction with screen access software that vocalizes the  
26 visual information found on a computer screen. This technology is known as screen-reading  
27 software. Screen-reading software is currently the only method a blind or visually-impaired  
28 person may use to independently access the internet. Unless websites are designed to be read by

1 screen-reading software, blind and visually-impaired persons are unable to fully access websites,  
2 and the information, products, and services contained thereon.

3       17. Blind and visually-impaired users of Windows operating system-enabled  
4 computers and devices have several screen-reading software programs available to them. Some  
5 of these programs are available for purchase and other programs are available without the user  
6 having to purchase the program separately. Job Access With Speech, otherwise known as  
7 "JAWS," is currently the most popular, separately purchased and downloaded screen-reading  
8 software program available for a Windows computer.

9       18. For screen-reading software to function, the information on a website must be  
10 capable of being rendered into text. If the website content is not capable of being rendered into  
11 text, the blind or visually-impaired user is unable to access the same content available to sighted  
12 users.

13       19. The international website standards organization, the World Wide Web  
14 Consortium, known throughout the world as W3C, has published Success Criteria for version 2.1  
15 of the Web Content Accessibility Guidelines ("WCAG 2.1" hereinafter). WCAG 2.1 are well-  
16 established guidelines for making websites accessible to blind and visually-impaired people.  
17 These guidelines are adopted, implemented, and followed by most large business entities who  
18 want to ensure their websites are accessible to users of screen-reading software programs.  
19 Though WCAG 2.1 has not been formally adopted as the standard for making websites accessible,  
20 it is one of, if not the most, valuable resource for companies to operate, maintain, and provide a  
21 website that is accessible under the ADA to the public.

22       20. Within this context, the Ninth Circuit has recognized the viability of ADA claims  
23 against commercial website owners/operators with regard to the accessibility of such websites.  
24 *Robles v. Domino's Pizza, LLC*, Docket No. 17-55504 (9th Cir. Apr 13, 2017), Court Docket No.  
25 BL-66. This is in addition to the numerous courts that already recognized such application.

26       21. Each of Defendant's violations of the Americans with Disabilities Act is likewise  
27 a violation of the Unruh Civil Rights Act. Indeed, the Unruh Civil Rights Act provides that any  
28

1 violation of the ADA constitutes a violation of the Unruh Civil Rights Act. Cal. Civ. Code, §  
2 51(f).

3 22. Further, Defendant's actions and inactions denied Plaintiff full and equal access to  
4 their accommodations, facilities, and services. A substantial motivating reason for Defendant to  
5 deny Plaintiff access was the perception of Plaintiff's disability. Defendant's denial of Plaintiff's  
6 accessibility was a substantial motivating reason for Defendant's conduct. Plaintiff was harmed  
7 due to Defendant's conduct. Defendant's actions and inactions were a substantial factor in  
8 causing the lack of access to Plaintiff. Unruh Civil Rights Act. Cal. Civ. Code, § 51.

9 23. Inaccessible or otherwise non-compliant websites pose significant access barriers  
10 to blind and visually-impaired persons. Common barriers encountered by blind and visually  
11 impaired persons include, but are not limited to, the following:

- 12 a. A text equivalent for every non-text element is not provided;
- 13 b. Title frames with text are not provided for identification and navigation;
- 14 c. Equivalent text is not provided when using scripts;
- 15 d. Forms with the same information and functionality as for sighted persons are  
16 not provided;
- 17 e. Information about the meaning and structure of content is not conveyed by  
18 more than the visual presentation of content;
- 19 f. Text cannot be resized without assistive technology up to 200 percent without  
20 loss of content or functionality;
- 21 g. If the content enforces a time limit, the user is not able to extend, adjust or  
22 disable it;
- 23 h. Web pages do not have titles that describe the topic or purpose;
- 24 i. The purpose of each link cannot be determined from the link text alone or from  
25 the link text and its programmatically determined link context;
- 26 j. One or more keyboard operable user interface lacks a mode of operation where  
27 the keyboard focus indicator is discernible;
- 28 k. The default human language of each web page cannot be programmatically

determined;

- l. When a component receives focus, it may initiate a change in context;
- m. Changing the setting of a user interface component may automatically cause a change of context where the user has not been advised before using the component;
- n. Labels or instructions are not provided when content requires user input;
- o. In content which is implemented by using markup languages, elements do not have complete start and end tags, elements are not nested according to their specifications, elements may contain duplicate attributes and/or any IDs are not unique;
- p. Inaccessible Portable Document Format (PDFs); and
- q. The name and role of all User Interface elements cannot be programmatically determined; items that can be set by the user cannot be programmatically set; and/or notification of changes to these items is not available to user agents, including assistive technology.

## **FACTUAL BACKGROUND**

24. Defendant offers the <http://www.baitme.com/> website to the public. The website offers features which should allow all consumers to access the goods and services which Defendant offers in connection with its physical locations. The goods and services offered by Defendant include but are not limited to the following: bait collaborations such as Bait X Toy story, Bait X Bruce Lee, Bait X Pokemon, Bait X Star Wars, Bait X Pacman, Bait X monopoly, Bait X Sriracha, and Bait X SpongeBob; Nike apparel such as hoodies, jackets, jerseys, long sleeve tees, pants, short sleeve shirts, shorts, socks, sweaters, tank tops, tees, underwear, and vests; footwear such as Vans, Toms, Timberland, Reebok, Puma, Jordan, New Balance, Clarks, Billionaire Boys Club, Adidas, and A Bathing Ape; and headwear from a variety of brands such as Undefeated, Stussy, 10 Deep, 40s and Shorties, American needle, Barney Cools, Converse, Dimepiece, Ice Cream, La Carrera, Lazy Oaf, Medicom, Mitchell and Ness. Consumers are also able to access various other apparel and goods such as dresses, hoodies, jackets, jeans, leggings,

1 polos, socks, sweaters, swimwear, tank tops, skate and snow gear, apple accessories, bags, belts,  
 2 bracelets, glasses, headphones, iPhone cases, keychains, necklaces, pillows, pins, shoelaces,  
 3 wallets, watches, books, figures, magazines, pins, plush toys, and skateboards. Consumers can  
 4 further access information about Defendant's store locations, goods for preorder, sale items,  
 5 projects, blog, shipping information, social media accounts, and contact information.

6       25. Based on information and belief, it is Defendant's policy and practice to deny  
 7 Plaintiff and Class Members, along with other blind or visually-impaired users, access to  
 8 Defendant's website, and to therefore specifically deny the goods and services that are offered  
 9 and integrated within Defendant's stores. Due to Defendant's failure and refusal to remove access  
 10 barriers on its website, Plaintiff and other visually-impaired persons have been and are still being  
 11 denied equal and full access to Defendant's stores, apparel, goods, and services offered to the  
 12 public through Defendant's Website.

#### **DEFENDANT'S BARRIERS ON UNRUH CIVIL RIGHTS ACT. CAL. CIV. CODE, §**

##### **51(f) DENY PLAINTIFF AND CLASS MEMBERS' ACCESS**

15       26. Plaintiff is a visually-impaired and legally blind person, who cannot use a  
 16 computer without the assistance of screen-reading software. However, Plaintiff is a proficient  
 17 user of the JAWS screen-reader as well as Mac's VoiceOver and uses it to access the internet.  
 18 Plaintiff has visited <http://www.baitme.com/> on several separate occasions using the JAWS  
 19 and/or VoiceOver screen-readers.

20       27. During Plaintiff's numerous visits to Defendant's website, Plaintiff encountered  
 21 multiple access barriers which denied Plaintiff full and equal access to the facilities, goods, and  
 22 services offered to the public and made available to the public on Defendant's website. Due to  
 23 the widespread access barriers Plaintiff and Class Members encountered on Defendant's website,  
 24 Plaintiff and Class Members have been deterred, on a regular basis, from accessing Defendant's  
 25 website. Similarly, the access barriers Plaintiff has encountered on Defendant's website has  
 26 deterred Plaintiff and Class Members from visiting Defendant's physical locations.

27       28. While attempting to navigate Defendant's website, Plaintiff and Class Members  
 28 encountered multiple accessibility barriers for blind or visually-impaired people that include, but

1 are not limited to, the following:

- 2 a. Lack of Alternative Text (“alt-text”), or a text equivalent. Alt-text is invisible  
3 code embedded beneath a graphic or image on a website that is read to a user  
4 by a screen-reader. For graphics or images to be fully accessible for screen-  
5 reader users, it requires that alt-text be coded with each graphic or image so  
6 that screen-reading software can speak the alt-text to describe the graphic or  
7 image where a sighted user would just see the graphic or image. Alt-text does  
8 not change the visual presentation, but instead a text box shows when the  
9 cursor hovers over the graphic or image. The lack of alt-text on graphics and  
10 images prevents screen-readers from accurately vocalizing a description of the  
11 image or graphic. As a result, Plaintiff and Class Members who are blind and  
12 visually-impaired customers are unable to shop and access Defendant’s  
13 apparel, which is made in collaboration with highly reputed and sought-after  
14 brands. Consumers are further unable to access information about store  
15 locations across the globe, brands Defendant has collaborated with, items  
16 available for pre-order, items for sale, contact information, shipping  
17 information, return policy, social media accounts, projects, blog, or place any  
18 orders;
- 19 b. Empty Links that contain No Text causing the function or purpose of the link  
20 to not be presented to the user. This can introduce confusion for keyboard and  
21 screen-reader users;
- 22 c. Redundant Links where adjacent links go to the same URL address which  
23 results in additional navigation and repetition for keyboard and screen-reader  
24 users; and
- 25 d. Linked Images missing alt-text, which causes problems if an image within a  
26 link does not contain any descriptive text and that image does not have alt-text.  
27 A screen reader then has no content to present the user as to the function of the  
28 link, including information or links for and contained in PDFs.

1       29. Recently in 2020, Plaintiff attempted to do business with Defendant on  
 2 Defendant's website. Plaintiff has visited prior iterations of the website, <http://www.baitme.com/>,  
 3 and also encountered barriers to access on Defendant's website.

4       30. Despite past and recent attempts to do business with Defendant on its website, the  
 5 numerous access barriers contained on the website and encountered by Plaintiff have denied  
 6 Plaintiff full and equal access to Defendant's website. Plaintiff and Class Members, as a result  
 7 of the barriers on Defendant's website, continue to be deterred on a regular basis from accessing  
 8 Defendant's website. Likewise, based on the numerous access barriers Plaintiff and Class  
 9 Members have been deterred and impeded from the full and equal enjoyment of goods and  
 10 services offered in Defendant's stores and from making purchases at such physical locations.

### **DEFENDANT MUST REMOVE BARRIERS TO ITS WEBSITE**

12      31. Due to the inaccessibility of the Defendant's website, blind and visually-impaired  
 13 customers such as Plaintiff, who need screen-readers, cannot fully and equally use or enjoy the  
 14 facilities and services Defendant offers to the public on its website. The access barriers the  
 15 Plaintiff encountered have caused a denial of Plaintiff's full and equal access in the past and now  
 16 deter Plaintiff on a regular basis from accessing the website.

17      32. These access barriers on Defendant's website have deterred Plaintiff from visiting  
 18 Defendant's physical locations and enjoying them equal to sighted individuals because: Plaintiff  
 19 was unable to find the location and hours of operation of Defendant's locations on its website,  
 20 preventing Plaintiff from visiting the locations to purchase goods and/or services. Plaintiff and  
 21 Class Members intend to visit the Defendant's locations in the near future if Plaintiff and Class  
 22 Members could access Defendant's website.

23      33. If the website were equally accessible to all, Plaintiff and Class Members could  
 24 independently navigate the website and complete a desired transaction, as sighted individuals do.

25      34. Plaintiff, through Plaintiff's attempts to use the website, has actual knowledge of  
 26 the access barriers that make these services inaccessible and independently unusable by blind and  
 27 visually-impaired people.

28      35. Because simple compliance with WCAG 2.1 would provide Plaintiff and Class

1 Members, who are visually-impaired consumers, with equal access to the website, Plaintiff and  
2 Class Members allege that Defendant engaged in acts of intentional discrimination, including, but  
3 not limited to, the following policies or practices: constructing and maintaining a website that is  
4 inaccessible to visually-impaired individuals, including Plaintiff and Class Members; failing to  
5 construct and maintain a website that is sufficiently intuitive so as to be equally accessible to  
6 visually-impaired individuals, including Plaintiff and Class Members; and failing to take actions  
7 to correct these access barriers in the face of substantial harm and discrimination to blind and  
8 visually-impaired consumers, such as Plaintiff and Class Members, as a member of a protected  
9 class.

10       36.     The Defendant uses standards, criteria, or methods of administration that have the  
11 effect of discriminating or perpetuating the discrimination against others, as alleged herein.

12       37.     The ADA expressly contemplates the injunctive relief that plaintiff  
13 seeks in this action. In relevant part, the ADA requires:

14           In the case of violations of ... this title, injunctive relief shall include an order to  
15 alter facilities to make such facilities readily accessible to and usable by  
16 individuals with disabilities .... Where appropriate, injunctive relief shall also  
17 include requiring the ... modification of a policy .... 42 U.S.C. § 12188(a)(2).

18       38.     Because Defendant's website has never been equally accessible, and because  
19 Defendant lacks a corporate policy that is reasonably calculated to cause the Defendant's website  
20 to become and remain accessible, Plaintiff invokes 42 U.S.C. § 12188(a)(2) and seeks a  
21 permanent injunction requiring Defendant to retain a qualified consultant acceptable to Plaintiff  
22 to assist Defendant to comply with WCAG 2.1 guidelines for Defendant's website. The website  
23 must be accessible for individuals with disabilities who use desktop computers, laptops, tablets,  
24 and smartphones. Plaintiff and Class Members seek that this permanent injunction require  
25 Defendant to cooperate with the agreed-upon consultant to: train Defendant's employees and  
26 agents who develop the website on accessibility compliance under the WCAG 2.1 guidelines;  
27 regularly check the accessibility of the website under the WCAG 2.1 guidelines; regularly test  
28 user accessibility by blind or vision-impaired persons to ensure that the Defendant's website  
complies under the WCAG 2.1 guidelines; and develop an accessibility policy that is clearly

disclosed on the Defendant's website, with contact information for users to report accessibility-related problems and require that any third-party vendors who participate on the Defendant's website to be fully accessible to the disable by conforming with WCAG 2.1.

39. If Defendant's website were accessible, Plaintiff and Class Members could independently access information about the address and hours of store locations, services offered, and goods available for online purchase.

40. Although Defendant may currently have centralized policies regarding maintaining and operating Defendant's website, Defendant lacks a plan and policy reasonably calculated to make Defendant's website fully and equally accessible to, and independently usable by, blind and other visually-impaired consumers.

41. Defendant has, upon information and belief, invested substantial sums in developing and maintaining Defendant's website, and Defendant has generated significant revenue from Defendant's website. These amounts are far greater than the associated cost of making Defendant's website equally accessible to visually impaired customers. Plaintiff has also visited prior iterations of the Defendant's website, <http://www.baitme.com/>, and also encountered such barriers.

42. Without injunctive relief, Plaintiff and Class Members will continue to be unable to independently use Defendant's website, resulting in a violation of their rights.

## **CLASS ACTION ALLEGATIONS**

43. Plaintiff, on behalf of herself and all others similarly situated, seeks to certify a nationwide class under Fed. R. Civ. P. 23(a) and 23(b)(2) (b)(3), the Nationwide class is initially defined as follows:

all legally blind individuals who have attempted to access Defendant's website by the use of a screen reading software during the applicable limitations period up to and including final judgment in this action.

44. The California class is initially defined as follows:

all legally blind individuals in the State of California who have attempted to access Defendant's website by the use of a screen reading software during the applicable limitations period up to and including final judgment in this action.

45. Excluded from each of the above Classes is Defendant, including any entity in

1 which Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by  
2 Defendant, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors,  
3 successors, and assigns of Defendant. Also excluded are the judge and the court personnel in this  
4 case and any members of their immediate families. Plaintiff reserves the right to amend the Class  
5 definitions if discovery and further investigation reveal that the Classes should be expanded or  
6 otherwise modified.

7       46. *Numerosity*: Fed. R. Civ. P. 23(a)(1). This action has been brought and may  
8 properly be maintained as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3)  
9 of the Federal Rules of Civil Procedure. While the exact number and identities of other Class  
10 Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are  
11 hundreds of thousands of Members in the Class. Based on the number of customers who have  
12 visited Defendant's California stores, it is estimated that the Class is composed of more than  
13 10,000 persons. Furthermore, even if subclasses need to be created for these consumers, it is  
14 estimated that each subclass would have thousands of Members. The Members of the Class are  
15 so numerous that joinder of all Members is impracticable and the disposition of their claims in a  
16 class action rather than in individual actions will benefit the parties and the courts.

17       47. *Typicality*: Plaintiff and Class Members' claims are typical of the claims of the  
18 Members of the Class as all Members of the Class are similarly affected by Defendant's wrongful  
19 conduct, as detailed herein.

20       48. *Adequacy*: Plaintiff will fairly and adequately protect the interests of the Members  
21 of the Class in that they have no interests antagonistic to those of the other Members of the Class.  
22 Plaintiff has retained experienced and competent counsel.

23       49. *Superiority*: A class action is superior to other available methods for the fair and  
24 efficient adjudication of this controversy. Since the damages sustained by individual Class  
25 Members may be relatively small, the expense and burden of individual litigation makes it  
26 impracticable for the Members of the Class to individually seek redress for the wrongful conduct  
27 alleged herein. Furthermore, the adjudication of this controversy through a class action will avoid  
28 the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will

1 be no difficulty in the management of this action as a class action. If Class treatment of these  
2 claims were not available Defendant would likely unfairly receive thousands of dollars or more  
3 in improper revenue.

4       50. *Common Questions Predominate:* Common questions of law and fact exist as to  
5 all Members of the Class and predominate over any questions solely affecting individual  
6 Members of the Class. Among the common questions of law and fact applicable to the Class are:

- 7           i. Whether Defendant's website, <http://www.baitme.com/>, is inaccessible to  
8              the visually-impaired who use screen reading software to access internet  
9              websites;
- 10          ii. Whether Plaintiff and Class Members have been unable to access  
11             <http://www.baitme.com/> through the use of screen reading software;
- 12          iii. Whether the deficiencies in Defendant's website violate the Americans  
13             with Disabilities Act of 1990, 42 U.S.C. § 12181 *et seq.*;
- 14          iv. Whether the deficiencies in Defendant's website violate the California  
15             Unruh Civil Rights Act, California Civil Code § 51 *et seq.*;
- 16          v. Whether, and to what extent, injunctive relief should be imposed on  
17             Defendant to make <http://www.baitme.com/> readily accessible to and  
18             usable by visually-impaired individuals;
- 19          vi. Whether Plaintiff and Class Members are entitled to recover statutory  
20             damages with respect to Defendant's wrongful conduct; and
- 21          vii. Whether further legal and/or equitable relief should be granted by the Court  
22             in this action.

23        51. The class is readily definable and prosecution of this action as a Class action will  
24        reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty which will be  
25        encountered in the management of this litigation which would preclude the maintenance of this  
26        matter as a Class action.

27        52. The prerequisites to maintaining a class action for injunctive relief or equitable  
28        relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds

generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

53. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual Members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

54. The prosecution of separate actions by Members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all Members of the Class although certain Class Members are not parties to such actions.

55. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

**COUNT I**

## **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12181**

ET SEQ.

(On Behalf of Plaintiff, the Nationwide Class and the California Class)

56. Plaintiff alleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 55, inclusive, of this Complaint as if set forth fully herein.

57. Section 302(a) of Title III of the ADA, 42 U.S.C. § 12181 *et seq.*, provides: “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

58. Under Section 302(b)(2) of Title III of the ADA, unlawful discrimination also includes, among other things: “a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities,

1 privileges, advantages, or accommodations to individuals with disabilities, unless the entity can  
 2 demonstrate that making such modifications would fundamentally alter the nature of such goods,  
 3 services, facilities, privileges, advantages or accommodations;” and “a failure to take such steps  
 4 as may be necessary to ensure that no individual with a disability is excluded, denied services,  
 5 segregated or otherwise treated differently than other individuals because of the absence of  
 6 auxiliary aids and services, unless the entity can demonstrate that taking such steps would  
 7 fundamentally alter the nature of the good, service, facility, privilege, advantage, or  
 8 accommodation being offered or would result in an undue burden.” 42 U.S.C. §  
 9 12182(b)(2)(A)(ii)-(iii). “A public accommodation shall take those steps that may be necessary  
 10 to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise  
 11 treated differently than other individuals because of the absence of auxiliary aids and services,  
 12 unless the public accommodation can demonstrate that taking those steps would fundamentally  
 13 alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being  
 14 offered or would result in an undue burden, i.e., significant difficulty or expense.” 28 C.F.R. §  
 15 36.303(a). In order to be effective, auxiliary aids and services must be provided in accessible  
 16 formats, in a timely manner, and in such a way as to protect the privacy and independence of the  
 17 individual with a disability.” 28 C.F.R. § 36.303(c)(1)(ii).

18       59. Defendant’s store locations are “public accommodations” within the meaning of  
 19 42 U.S.C. § 12181 *et seq.* Defendant generates millions of dollars in revenue from the sale of its  
 20 amenities and services, privileges, advantages, and accommodations in California through its  
 21 locations and related services, privileges, advantages, and accommodations and its Website,  
 22 <http://www.baitme.com/>, is a service, privilege, advantage and accommodation provided by  
 23 Defendant that is inaccessible to customers who are visually-impaired like Plaintiff. This  
 24 inaccessibility denies visually-impaired customers full and equal enjoyment of and access to the  
 25 facilities and services, privileges, advantages, and accommodations that Defendant made  
 26 available to the non-disabled public. Defendant is violating the Americans with Disabilities Act,  
 27 42 U.S.C. § 12181 *et seq.*, in that Defendant denies visually-impaired customers the services,  
 28 privileges, advantages, and accommodations provided by <http://www.baitme.com/>. These

1 || violations are ongoing.

2       60.     Defendant's actions constitute intentional discrimination against Plaintiff and  
3 Class Members on the basis of a disability in violation of the Americans with Disabilities Act, 42  
4 U.S.C. § 12181 *et seq.* in that: Defendant has constructed a website that is inaccessible to Plaintiff  
5 and Class Members; maintains the website in this inaccessible form; and has failed to take  
6 adequate actions to correct these barriers even after being notified of the discrimination that such  
7 barriers cause.

8       61. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures, and rights set forth  
9 and incorporated therein, Plaintiff requests relief as set forth below.

## COUNT II

**VIOLATIONS OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE §  
51 ET SEQ.**

(On Behalf of Plaintiff and the California Class)

4       62. Plaintiff alleges and incorporates herein by reference each and every allegation  
5 contained in paragraphs 1 through 61, inclusive, of this Complaint as if set forth fully herein.

6       63.     Defendant's locations are "business establishments" within the meaning of the  
7     California Civil Code § 51 *et seq.* Defendant generates millions of dollars in revenue from the  
8     sale of its services in California through its physical locations and related services and  
9     <http://www.baitme.com/> is a service provided by Defendant that is inaccessible to customers who  
10    are visually-impaired like Plaintiff and Class Members. This inaccessibility denies visually-  
11    impaired customers full and equal access to Defendant's facilities and services that Defendant  
12    makes available to the non-disabled public. Defendant is violating the Unruh Civil Rights Act,  
13    California Civil Code § 51 *et seq.*, in that Defendant is denying visually-impaired customers the  
14    services provided by <http://www.baitme.com/>. These violations are ongoing.

5           64. Defendant's actions constitute intentional discrimination against Plaintiff and  
6 Class Members on the basis of a disability in violation of the Unruh Civil Rights Act, Cal. Civil  
7 Code § 51 *et seq.* in that: Defendant has constructed a website that is inaccessible to Plaintiff and  
8 Class Members; maintains the website in this inaccessible form; and has failed to take adequate

1 actions to correct these barriers even after being notified of the discrimination that such barriers  
2 cause.

3       65.     Defendant is also violating the Unruh Civil Rights Act, California Civil Code § 51  
4     *et seq.* in that the conduct alleged herein likewise constitutes a violation of various provisions of  
5     the ADA, 42 U.S.C. § 12101 *et seq.* Section 51(f) of the California Civil Code provides that a  
6     violation of the right of any individual under the ADA shall also constitute a violation of the  
7     Unruh Civil Rights Act.

8       66. The actions of Defendant were and are in violation of the Unruh Civil Rights Act,  
9 California Civil Code § 51 *et seq.*; therefore, Plaintiff and Class Members are entitled to injunctive  
10 relief remedying the discrimination.

11       67. Plaintiff and Class Members are also entitled to statutory minimum damages  
12 pursuant to California Civil Code § 52 for each and every offense.

13       68. Plaintiff and Class Members are also entitled to reasonable attorneys' fees and  
14 costs.

15       69. Plaintiff and Class Members are also entitled to a preliminary and permanent  
16 injunction enjoining Defendant from violating the Unruh Civil Rights Act, California Civil Code  
17 § 51 *et seq.*, and requiring Defendant to take the steps necessary to make <http://www.baitme.com/>  
18 readily accessible to and usable by visually-impaired individuals.

## **PRAAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually and on behalf of all Class Members, respectfully  
21 requests that the Court enter judgment in her favor and against Defendant as follows:

22 A. For an Order certifying the Nationwide Class and California Class as  
23 defined herein and appointing Plaintiff and her Counsel to represent the  
24 Nationwide Class and the California Class;

25 B. A preliminary and permanent injunction pursuant to 42 U.S.C. § 12188(a)(1) and  
26 (2) and section 52.1 of the California Civil Code enjoining Defendant from  
27 violating the Unruh Civil Rights Act, the ADA, and requiring Defendant to take

1           the steps necessary to make <http://www.baitme.com/> readily accessible to and  
2           usable by visually-impaired individuals;

3           C. An award of statutory minimum damages of \$4,000 per offense per person  
4           pursuant to section 52(a) of the California Civil Code;  
5           D. For attorneys' fees and expenses pursuant to California Civil Code §§ 52(a),  
6           52.1(h), and 42 U.S.C. § 12205;  
7           E. For pre-judgment interest to the extent permitted by law;  
8           F. For costs of suit; and  
9           G. For such other and further relief as the Court deems just and proper.

10           **DEMAND FOR JURY TRIAL**

11           Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial  
12           for all claims so triable.

14           Dated: December 10, 2020

15           Respectfully Submitted,

17           \_\_\_\_\_  
18           Thiago M. Coelho  
19           **WILSHIRE LAW FIRM**  
20           *Attorney for Plaintiff and Proposed Class*